

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2005-121521-001 DT

11/02/2010

HONORABLE MICHAEL D. GORDON

CLERK OF THE COURT
C. Kelly
Deputy

STATE OF ARIZONA

STACY LYNN HYDER

v.

ANTHONY JOHN BELOIT (001)

ANTHONY JOHN BELOIT
201091 ASPC FLORENCE SOUTH U
P O BOX 8400
FLORENCE AZ 85132
JOSEPH W CHARLES

COURT ADMIN-CRIMINAL-PCR
VICTIM SERVICES DIV-CA-CCC

MINUTE ENTRY

The Court has reviewed defendant's Motion to Submit Pro Per Petition for Post-Conviction Relief filed on October 27, 2010. Defendant pled guilty on November 1, 2005, and was sentenced by this Court on December 2, 2005. This is the defendant's first PCR proceeding and it has been filed in an untimely manner.

Pursuant to Rule 32.4(a) of the Arizona Rules of Criminal Procedure, the Notice of Post-Conviction Relief must be filed within 90 days of the entry of judgment and sentencing or within 30 days of the issuance of the final order or mandate from the appellate court. The defendant was sentenced on December 2, 2005, far more than 90 days prior to filing the instant petition.

Defendant claims that his constitutional, ethical, and civil rights were violated and he is entitled to relief pursuant to Ariz. R. Crim. P. 32.1(a). Specifically, defendant claims that the Court sentenced him illegally and that the sentences violate his right not to be placed in double jeopardy for the same offense. Defendant cannot raise these claims in an untimely Rule 32

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proceeding because an untimely notice may only raise claims pursuant to Rule 32.1(d), (e), (f), (g), or (h). Ariz. R. Crim. P. 32.4(a).

Defendant also claims there are newly discovered material facts which probably would have changed the verdict or sentence in her case. To be entitled to post-conviction relief based on newly discovered evidence, the defendant must show that the evidence was discovered after trial although existed before trial; the evidence could not have been discovered and produced at trial or appeal through reasonable diligence; the evidence is neither solely cumulative nor impeaching; the evidence is material; and the evidence probably would have changed the verdict or sentence. *State v. Saenz*, 197 Ariz. 487, 489, ¶ 7, 4 P.3d 1030, 1032 (App. 2000), *see also* Ariz. R. Crim. P. 32.1(e).

Defendant fails to support this claim. Pursuant to Rule 32.5, "Facts within the defendant's personal knowledge shall be noted separately from other allegations of fact and shall be under oath. Affidavits, records, or other evidence currently available to the defendant supporting the allegations of the petition shall be attached to it. Legal and record citations and memoranda of points and authorities are required." Ariz. R. Crim. P. 32.5. Defendant fails to provide any facts, affidavits, records, or other evidence to support this claim.

Defendant fails to state a claim for which relief can be granted in an untimely Rule 32 proceeding.

IT IS THEREFORE ORDERED dismissing defendant's Motion to Submit Pro Per Petition for Post-Conviction Relief.

/S/ MICHAEL D. GORDON

THE HONORABLE MICHAEL D. GORDON